



RESPONSES TO INFORMATION REQUESTS (RIRs)

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IND100307.E

India: Documentation required and procedures to be followed by a parent wishing to travel abroad with a minor child in the absence, or without the consent of, the second parent; whether the rules and procedures are the same in respect of mothers and fathers

Research Directorate, Immigration and Refugee Board, Ottawa

The following information was provided in 27 July 2005 correspondence by a human rights lawyer based in New Delhi, in response to questions posed by the Research Directorate, which are reproduced in bold below:

1. What documentation is required and what procedures must be followed to enable a parent to travel abroad (out of India) with a minor child in the absence, or without the consent, of the second parent?

Children can travel on their own passport or on the passport of their parent/guardian. In the normal course, custody of the child is assumed to be joint and, therefore, no specific letter of consent or other documentation is required from the other parent when a child travels along with one parent. However, [if] there is a court order granting custody of the child to one parent, the other parent cannot take the child without the consent of the parent having legal custody [unless he/she obtains] the permission of the court.

It is also possible that the order granting custody to a parent may be conditional and may require her/him to seek the consent of the other parent (or the permission of the court) before taking the child out of the jurisdiction of the Indian courts.

In cases where custody is legally with one parent and that parent communicates an apprehension to the emigration authorities that the other parent may try to spirit the child out of the country, without the consent of the parent having custody, the emigration department should put the child and the offending parent on its "watch" list, for possible denial of permission to leave. As a rule of prudence, in such cases it would be advisable to also file an application before the concerned court, for appropriate directions to the emigration department.

2. Are the provisions/rules/regulations the same in respect of mothers and fathers? Please provide detailed information on any differences that may exist in this regard.

... The law is the same for both parents in this respect.

Additional and corroborating information on the documentation required and procedures to be followed by a parent wishing to travel abroad with a minor child in the absence, or without the consent, of the second parent could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

Reference

Human rights lawyer, New Delhi. 27 July 2005. Correspondence.

Additional Sources Consulted

The High Commission of India, in Ottawa, did not respond to a letter requesting information.

Internet sites, including: A Briggs: Passport & Visa Expeditors, Foreign Affairs Canada (Travel Report), Hague Conference on Private International Law (Child Abduction Homepage), Indian Ministry of External Affairs, UK Foreign and Commonwealth Office (Countries & Regions), US Department of State (Bureau of Consular Affairs - Travel Advisory).

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